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December 21, 2017

VIA ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Notice of Oral Ex Parte Communication

Re: *FCC Seeks Comment on Waiver of Part 25 Licensing Requirement for Receive-Only Earth Stations Operating with the Galileo Radionavigation-Satellite Service*;
IB Docket No. 17-16

Dear Ms. Dortch:

On December 19, the undersigned counsel for Trimble Inc. ("Trimble") spoke with Karl Kensinger of the International Bureau regarding a Trimble submission to the European GNSS Agency ("GSA") which, like the above-referenced proceeding, addresses the provision of services by the Galileo Global Satellite Navigation System. I urged the Commission to consider Trimble's GSA submission as it continues its work in evaluating the request submitted by the European Commission for waiver of the Commission's licensing requirements to permit non-Federal receive-only earth stations to operate with Galileo signals. A copy of Trimble's submission to the GSA is attached.

Pursuant to the Commission's rules, I have provided a copy of this letter and the attachment to Mr. Kensinger.

Sincerely,

/s/ Russell H. Fox

Russell H. Fox

Attachment

cc: Karl Kensinger (with attachment)

COMMENTS OF TRIMBLE INC. ON STAKEHOLDER CONSULTATION GSA/SC/30/17

December 11, 2017

Introduction

Trimble Inc. ("Trimble," or the "Company") is a leading global provider of advanced location-based solutions that maximize productivity and enhance profitability, with employees in 39 countries worldwide, including a substantial presence and employee base in European Union ("EU") member countries. The Company integrates its positioning expertise in Global Positioning System ("GPS")/Global Navigation Satellite System ("GNSS"), laser, optical and inertial technologies with application software, wireless communications, and services to provide complete commercial solutions. Trimble is a leading provider – on a commercial basis -- of the type of high accuracy corrections services that the Stakeholder Consultation GSA/SC/30/17 addresses.[1]

Trimble historically has been, and continues to be, a strong supporter of the Galileo GNSS, and strongly believes that the Galileo GNSS will make substantial contributions to the worldwide GNSS user community. For example, Trimble was pleased to file comments in support of the application of the European Commission ("EC"), for waiver of the US Federal Communications Commission ("FCC") licensing requirements to permit non-federal receive-only earth stations within the United States to operate with signals of the Galileo Radionavigation-Satellite Service ("RNSS"),[2] and appreciates the opportunity to provide comments on this Consultation.

As the Consultation acknowledges, the proposal to provide a free High Accuracy ("HA") service as part of the Galileo GNSS service represents a departure from the EU's prior statements of intent relative to the commercial service, including an HA service.[3] In particular, the consultation differs from the scheme originally foreseen by the February 2017 Implementing Decision (EU) 2017/224,[4] which stated:

> Whereas … [t]he commercial service is one of the essential elements of the system established under the Galileo programme insofar as, on the one hand, the other Global Navigation Satellite Systems (GNSS) do not include such a service and, on the other hand, it should generate income in accordance with Article 10 of Regulation (EU) No 1285/2013. Access to this service should be subject to a fee.

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1 *Stakeholder Consultation GAS/SC/30/17 on Galileo Commercial Service High Accuracy Provision*, Nov. 17, 2017 (the "Consultation"). As contemplated in the Consultation, Trimble has, at this stage, elected not to enter into an NDA and receive proprietary information relative to the possible free HA service which is the subject of the Consultation. Consultation at 5, n.4. Out of an abundance of caution, Trimble concluded that its concerns relative to a free HA service may be perceived as "conflicting with the objectives of the European GNSS programmes," rendering it imprudent for Trimble to have access to the associated proprietary information. *See, Consultation*, Annex 1 § 2.1.

2 *See, Comments of Trimble Inc. and Deere & Company*, IB Docket No. 17-16 (filed Feb. 21, 2017); and *Reply Comments of Trimble Inc. and Deere & Company*, IB Docket No. 17-16 (filed Mar. 23, 2017).

3 This Consultation considers "offering the High Accuracy Commercial Service (HA CS) to all interested users on a free of charge basis, with content and format of data publicly and openly available on a global scale." Consultation at § 1.5.

Trimble agrees with the Consultation that this change "needs to be carefully assessed in many respects."[5] In the spirit of constructive engagement to enable this careful assessment, Trimble respectfully outlines its serious concerns with this proposal below.

Key Stakeholder Consultation Considerations

As the EU has recognized, there is a vibrant and competitive commercial market for the provision of high accuracy augmentation and corrections services.[6] Trimble is one provider of such services in what is a well-established, dynamic and innovative commercial industry that continues to grow in a free and open market environment. As a leading provider of such solutions, Trimble has invested substantial sums in developing and operating high accuracy precise point positioning ("PPP") services. Trimble is very aware of the costs and effort involved in developing and providing such services. The proposal that the commercial service include a free HA service therefore necessarily entails a government subsidy to one or more market participants to cover the costs of providing such a service (so that the HA service can be provided to end users without charge) as well as a significant disruption of the existing commercial market for the provision of such services. These consequences of adopting the Consultation's proposal raise serious concerns under EU law, existing bilateral and multilateral treaty and international trade regimes, and existing reciprocity regimes.

First, the proposal raises concerns with respect to compliance with EU law. Article 119 of the Treaty on the Functioning of the European Union states that "[f]or the purposes set out in Article 3 of the Treaty on European Union, the activities of the Member States and the Union shall include, as provided in the Treaties, the adoption of an economic policy which is … conducted in accordance with the principle of an open market economy with free competition." Protocol No. 27 to the Lisbon Treaty on the Internal Market and Competition further states that "the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted." For the reasons stated above, introduction of a free service in a competitive market would distort competition.

Second, as part of this Consultation process, the European GNSS Agency ("GSA") must also carefully consider whether such an intervention is consistent with existing EU and member state treaty obligations. The 2004 Agreement On The Promotion, Provision And Use Of Galileo And GPS Satellite-Based Navigation Systems And Related Applications ("2004 Agreement")[7] between the United States and the European Community and European member states affirmed the desire of the parties "to promote open markets and to facilitate growth in trade with respect to commerce in global

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5 *Id.*

6 *See*, *e.g.* European Global Navigation Satellite Systems Agency, *GNSS Market Report Issue 5* at 75 (2017). ("Major players are offering affordable and user-friendly precise point positioning ("PPP") solutions, providing centimetre level accuracy worldwide, covering also oceans, with no distance limit from the reference stations, with a minimal network infrastructure.") ("GNSS Market Report"). Based on its experience, Trimble does not understand the basis of the quoted statement in the GNSS Market report that PPP services can be provided "with minimal network infrastructure." In fact, high-quality PPP services require significant ground based infrastructure in every area covered by the service, and increasing accuracy requirements will necessitate even more densely deployed infrastructure. The portion of the quoted statement with respect to the availability of commercial offerings is certainly accurate, however.

7 This joint agreement treaty is in force and signed by twenty-five EU Member States. Available at https://www.gps.gov/policy/cooperation/#europe.

navigation and timing goods, value-added services, and augmentations."[8] The parties further expressly affirmed a "non-discriminatory approach with respect to trade in goods and services related to civil satellite-based navigation and timing signals, augmentations, and value-added services" and that "measures with respect to goods and services related to civil satellite-based navigation and timing signals or services, augmentations, and value-added services should not be used as a disguised restriction on or an unnecessary obstacle to international trade."[9] Trimble is concerned that direct subsidies to a market participant would represent a discriminatory practice, while provision of a subsidized free offering would constitute an unnecessary obstacle to international trade, among other concerns.

Similarly, government intervention in commercial markets via the provision of subsidies to market participants and provision of free service under government sponsorship raise serious questions under multilateral trade agreements. The US FCC stated its interpretation of existing multilateral treaty obligations in the context of satellite services in its "DISCO II" decision as follows:

> Article XVII [of the General Agreement on Trade and Services ("GATS")] is a nondiscrimination rule that requires a WTO Member to treat like services and service suppliers from other WTO Members no less favorably than it treats its own services and service suppliers….the critical aspect of an MFN or national treatment analysis is whether the treatment accorded modifies the conditions of competition in favor of certain foreign or domestic suppliers.[10]

Provision of subsidies for HA services could also undercut broader EU international trade efforts. In the 2016 report on global trade and investment barriers, the EU Commissioner for Trade emphasized that "the EU will work to keep the global economy open for trade" and that the EU "will continue our efforts to strengthen the rules based multilateral framework of the World Trade Organisation – ensuring fairness for all," and noted concerns with government support and subsidies employed by other countries.[11] Similarly, in its 2105 report, the Commissioner highlighted concerns that "many countries continued to support their economic operators with new subsidies, incentives and other measures" stating that "[s]uch measures can have distorting competitive conditions globally and they are regularly raised at the WTO Committee on Subsidies and Countervailing Measures (SCM)."[12]

Third, Trimble is concerned that the proposed market intervention could disrupt US-EU reciprocity in the field of GNSS, which was first embodied in the 2004 Agreement, and which serves as the basis for U.S. consideration of the EU waiver application referenced above which Trimble has supported.

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8 *2004 Agreement*, preamble.

9 *2004 Agreement*, Article 6.

10 *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Report and Order, 12 FCC Rcd 24094 at ¶ 22 (1997).

11 Report From The Commission To The European Parliament And The Council On Trade And Investment Barriers 1 January – 31 December 2016, p.3.

12 Report From The Commission To The Council And The European Parliament on Trade and Investment Barriers and Protectionist Trends 1 July 2014 - 31 December 2015, p. 7.

The waiver application is considered under criteria set forth in an applicable 2011 policy statement of the US National Telecommunications and Information Administration ("NTIA"), which requires a determination that the waiver is in the public interest, is consistent with international trade and other treaty obligations, and adheres to the principles set forth in the DISCO II decision referenced above.[13] In recommending approval of the EU waiver application, the NTIA concluded that the Galileo service and offerings met this standard, taking into account "market access for US industry."[14] Trimble is deeply concerned that the proposed market intervention could undermine the basis for this recommendation and for the grant of the waiver.[15]

Trimble also notes that US National Space Policy speaks directly to the issues to be considered in the Consultation, in a manner which is consistent with the principles and policies described above. US policy does not support publicly funded GPS augmentation services (excluding aviation and marine safety) that would directly compete with commercial GNSS augmentation services. The June 28, 2010, "Commercial Space Guidelines" of the U.S. National Space Policy, in order to promote a robust commercial space industry, directs US government departments and agencies to, among other things:

- Develop governmental space systems only when it is in the national interest and there is no suitable, cost-effective U.S. commercial or, as appropriate, foreign commercial service or system that is or will be available;

- Refrain from conducting United States Government space activities that preclude, discourage, or compete with U.S. commercial space activities, unless required by national security or public safety;

- Pursue potential opportunities for transferring routine, operational space functions to the commercial space sector where beneficial and cost-effective, except where the government has legal, security, or safety needs that would preclude commercialization [16]

For these reasons, contrary action by the EU could undermine EU-US reciprocity and comity in GNSS.

Trimble looks forward to working constructively and cooperatively with European Galileo Authorities to continue to ensure an open and level US and worldwide GNSS commercial playing field. Under

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[13] Letter from Karl B. Nebbia, Associate Administrator, Office of Spectrum Management, NTIA, to Julius Knapp, Chief, Office of Engineering and Technology, FCC (Mar. 2, 2011).

[14] Letter from Paige Atkins, Associate Administrator, Office of Spectrum Management, NTIA, to Mindel De La Torre, Chief, International Bureau, FCC and Julius Knapp, Chief, Office of Engineering and Technology, FCC (January 30, 2015).

[15] Trimble agreed with NTIA's recommendation, subject to "review of market access and other conditions of the Galileo commercial service in the U.S. …." *See, Comments of Trimble Inc. and Deere & Company*, IB Docket No. 17-16, at 10-11 n.18 (filed Feb. 21, 2017). The waiver request remains pending before the U.S. FCC as of this submission, and Trimble intends to apprise the agency of the change in the nature of the HA commercial service offering that is proposed in the Consultation.

[16] *National Space Policy of the United States of America*, Sector Guidelines, Commercial Space Guidelines, June 28, 2010, at p 10, available at https://www.gps.gov/policy/docs/2010/.

the circumstances and in light of the concerns outlined herein, Trimble respectfully submits that the EU Galileo authorities should promptly commence consultations with the US GPS authorities under the cooperative framework adopted by the EU-US 2004 Agreement.